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In re Application of :
NAKAO et al. :
Serial No.: 10/594,763 :
PCT No.: PCT/JP05/06837 :
Int. Filing Date: 31 March 2005 : DECISION ON PETITION
Priority Date: 31 March 2004 :
Attorney's Docket No.: 1254-0327PUS1 : UNDER 37 CFR 1.182
For: COMPOSITION FOR INCREASING BODY HEIGHT:

This decision is in response to applicant's "Letter-Response to Notification of Missing Requirements" filed 26 September 2007 in the United States Patent and Trademark Office (USPTO) in the above-captioned application and as explained below, will be treated as a petition under 37 CFR 1.182.

On 29 September 2006, applicant filed the U.S. national stage application for international application PCT/JP05/06837, under 35 U.S.C. 371. These papers were assigned U.S. serial number 10/594,763.

On 04 September 2007, a Notification of Missing Requirements, was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), and the \$130 surcharge for filing the declaration after the thirty month period, was required.

On 26 September 2007, in a response to the Notification of Missing Requirements, applicant submitted the instant petition accompanied by a copy of the declaration and the itemized postcard receipt with USPTO date-stamp 29 September 2006, indicating receipt of, *inter alia*, a declaration executed by the inventors.

DISCUSSION

Applicant requests acceptance of the declaration submitted on 26 September 2007 in lieu of the original declaration, mailed on 29 September 2006.

As stated in section 503 of the Manual of Patent Examining Procedure (Rev. 6, September 2007)(MPEP):

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Applicant states that the executed declaration was originally filed on 29 September 2006 and provided a copy of the USPTO date-stamped postcard receipt indicating such. The postcard identifies the application number, applicant name and docket number. Among the items listed on the postcard receipt are "Declaration" and "English translation of the international application". The postcard is date-stamped by the USPTO "OIPE SEP 29 2006" and "PCT/PTO 29 SEP 2006".

A review of the USPTO date-stamped, itemized postcard receipt indicates that the declaration was deposited with the USPTO on 29 September 2006. Applicant has now presented a copy of the papers originally filed on 29 September 2006 and provided a copy of the date-stamped postcard receipt. Thus, the evidence is sufficient to establish that the declaration was received in the USPTO on 29 September 2006 and that the postcard receipt indicating a date of 29 September 2006 was mailed by the USPTO. Accordingly, the Office accepts the copy of the papers as a replacement for the missing original documents with a deposit date of 29 September 2006.

A review of the declaration reveals that the declaration identifies and is executed by each inventor, and states the residency, citizenship and mailing address of each inventor. Thus, the declaration is acceptable and meets the requirements of 37 CFR 1.497(a) and (b).

For the reasons set forth above, the 04 September 2007 Notification of Missing Requirements is hereby VACATED.

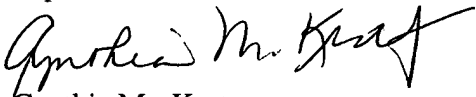
CONCLUSION

Applicant's petition under 37 CFR 1.181 to accept a copy of the declaration originally filed on 29 September 2006 is GRANTED.

The 04 September 2007 Notification of Missing Requirements is hereby VACATED.

The copy of the declaration originally submitted on 29 September 2006 and resubmitted on 29 September 2007 is acceptable and meets the requirements of 37 CFR 1.497(a) and (b).

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is 29 September 2006.


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